

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	MDL No. 1456
	)	
THIS DOCUMENT RELATES TO:	)	Master File No. 01-CV-12257-PBS
	)	
<i>City of New York, et al. v. Abbott Laboratories,</i>	)	Hon. Patti B. Saris
<i>et al.,</i>	)	
Civ. Action No. 04-cv-06054, et al.	)	

**DEFENDANT ASTRAZENECA'S MOTION  
FOR LEAVE TO FILE SUR-REPLY IN FURTHER OPPOSITION  
TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DATA  
FOR THE DESIGNATED FUL DRUGS**

AstraZeneca Pharmaceuticals LP and AstraZeneca LP (together  
“AstraZeneca”), by their undersigned attorneys, respectfully request leave  
pursuant to Local Rule 7.1(b)(2) to file a short sur-reply brief in opposition to  
Plaintiffs’ Reply Memorandum in Further Support of Plaintiffs’ Motion to  
Compel Production of Data for the Designated Ful Drugs. As grounds for the  
foregoing, AstraZeneca states as follows:

1. It is crucial that AstraZeneca be permitted to respond to Plaintiffs’  
reply brief because it contains new assertions that in fact require the denial of  
Plaintiffs’ motion. In particular, Plaintiffs attached as an “Exhibit” to their reply  
brief new assertions purportedly serving as the basis for their motion to compel.  
Plaintiffs had not provided that exhibit to AstraZeneca before serving their reply  
brief. Other than in the sur-reply brief submitted with this motion, AstraZeneca is  
without opportunity to respond to the assertions Plaintiffs now argue serve as the

basis for their motion to compel – assertions that in fact undermine Plaintiffs’ motion.

2. AstraZeneca’s proposed sur-reply, attached as Exhibit A hereto, is brief.

3. Attached as Exhibit B hereto is the Declaration of Benjamin Allee in Support of AstraZeneca’s Sur-Reply in Further Opposition to Plaintiffs’ Motion to Compel Production of Data for the Designated FUL Drugs.

4. Plaintiffs have indicated that they do not object to AstraZeneca’s seeking leave to file a sur-reply in further opposition to their motion to compel.

WHEREFORE AstraZeneca respectfully requests that this Court grant AstraZeneca leave to file a sur-reply opposition regarding Plaintiffs’ Motion to Compel Production of Data for the Designated FUL Drugs, and all other relief that this Court deems just and proper.

Dated: Boston, Massachusetts  
March 7, 2008

Respectfully Submitted,

By: /s/ Katherine B. Schmeckpeper  
Nicholas C. Theodorou (BBO # 496730)  
Katherine B. Schmeckpeper (BBO  
#663200)  
FOLEY HOAG LLP  
155 Seaport Blvd.  
Boston, Massachusetts 02210  
Tel: (617) 832-1000

D. Scott Wise (admitted *pro hac vice*)  
Kimberley Harris (admitted *pro hac vice*)  
DAVIS POLK & WARDWELL  
450 Lexington Avenue  
New York, New York 10017  
Tel: (212) 450-4000

*Attorneys for Defendants*  
*AstraZeneca Pharmaceuticals LP and*  
*AstraZeneca LP*

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

I certify that counsel for AstraZeneca Pharmaceuticals LP conferred with counsel for Plaintiffs pursuant to L.R. 7.1 prior to filing this motion and Plaintiffs do not object to this motion.

/s/ Katherine B. Schmeckpeper

Katherine B. Schmeckpeper

**CERTIFICATE OF SERVICE**

I, Katherine B. Schmeckpeper, hereby certify that a true copy of the foregoing document was served upon all counsel of record in the New York Counties Consolidated action electronically pursuant to Fed. R. Civ. P. 5(b)(2)(D) and CMO No. 2 on this 7th day of March, 2008, by causing a copy to be sent to LexisNexis File & Serve for posting and notification to all counsel of record.

/s/ Katherine B. Schmeckpeper

Katherine B. Schmeckpeper